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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/661,445
Filing Date: September 12, 2003
Appellant(s): KARANIKAS, TERRY

Schmeiser Olsen & Watts
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 23, 2007 appealing from the Office action mailed July 13, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: The rejection involving Dial, Jr. '424 in view of Torricelli '570, (listed as issue 3 in Appellant's brief), is being withdrawn.

Likewise, the rejection involving Carvel '504 in view of Torricelli '570, (listed as issue 3 in Appellant's brief), is being withdrawn. The final rejection of July 13, 2006 erroneously presented rejections of claims 16 and 17 as unpatentable over Dial, Jr. '424 or Carvel '504 in view of Torricelli '570.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

It should be noted that lines 13-14 of claim 15 recite "at least of one of said first, second and end panels is configured to be removably attached from one another" when it appears that in order to be consistent with the instant disclosure lines 13-14 should read --at least of one of said first, second and end panels is configured to be removably attached to another panel--. Appellant did propose to amend lines 13-14 of claim 15 but included further amendments and, in so doing precluded entry of the proposed after final amendment of September 13, 2006.

(8) Evidence Relied Upon

1,809,504	Carvel	6-1931
3,116,570	Torricelli	1-1964
5,511,761	Schultz	4-1996
5,836,572	Sugiyama	11-1998
6,032,424	Dial, Jr.	3-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 15-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification does not appear to describe the limitation or condition of the "...surfaces *horizontally supports* a plurality of...discrete veneer components". Such appears to be new matter. The specification does not appear clear and complete as to how the "...surfaces *horizontally supports* a plurality of...discrete veneer components".

The specification does not appear to have originally disclosed the limitation or condition of "irregularly-shaped discrete veneer components". Such appears to be new matter.

The specification does not appear to describe the limitation or condition of "at least one of the...surfaces is characterized by curvilinear edges", (claim 17). The

specification does not appear clear and complete as to "at least one of the...surfaces is characterized by curvilinear edges".

Claims 15-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15, lines 9-10, it is not clear as to what is being defined by the recitation of "...surfaces *horizontally supports* a plurality of...discrete veneer components". The specification does not appear clear and complete as to how the "...surfaces *horizontally supports* a plurality of...discrete veneer components". It is otherwise, not clear as to how the surfaces *horizontally supports* a plurality of...discrete veneer components. Further, it is not clear as to what is being defined by "irregularly-shaped discrete veneer components". The specification does not set forth any definition as to any "irregularly-shaped discrete veneer components".

Claim 17, it is not clear as to what is being defined by the recitation of "at least one of the...surfaces has curvilinear edges". The specification does not appear to clearly describe such a limitation or condition. It is otherwise, not clear as to how "at least one of the...surfaces has curvilinear edges".

Claim Rejections - 35 USC § 103

Claims 15, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dial, Jr. '424 in view of Sugiyama '572.

Dial, Jr. '424 discloses, Figs. 6, 8, 9, and 15-19, a first surface 61, formed by an interior surface of a first wall panel 66, a second surface, (61 of an opposite side), operatively attached to said first surface, said second surface formed by an interior surface of a second wall panel, (66 of an opposite side), end surfaces, (61 on the ends), operatively attached to said first and second surfaces thereby forming an upright form and opposing sides, said end surfaces formed by interior surfaces of end wall panels, wherein at least one of said first, second and end surfaces horizontally supports a plurality of shaped discrete veneer components 64 stacked vertically from the ground surface up against at least one panel, wherein the wall is formed of a binding material, (col. 4, line 46), to the wall unit form further wherein at least of one of said first, second and end panels is configured to be removably attached from one another, (col. 5, lines 22-25), to facilitate entry into a volume defined by the upright form, wherein said entry allows for placement of said plurality of irregularly-shaped discrete components, (**claim 15**). A volume is formed which can produce an "integral footing", (e.g., lower most part of the form), (**claim 19**). Pocket structures, or discrete components, 16, 16a are operatively attached to surfaces, (**claim 20**). Dial, Jr. '424 does not appear to disclose use of "irregularly-shaped veneer components" and does not appear to disclose four separate form panels.

However, Sugiyama '572 teaches, as in Fig. 1, application and utilization of "irregularly-shaped" veneer components to form a wall structure. Therefore, to have provided the Dial, Jr. '424 assembly with "irregularly-shaped" veneer components, along with or in place of the veneer components 64, thus providing a natural look to the wall

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surface, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Sugiyama '572. Dial, Jr. apparently discloses the capability of removing a panel, (albeit two panels at a time), which would allow access to the interior of the Dial, Jr. mold. In any event, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the Dial, Jr. assembly with four separate removable panels since it is well established that to provide for separable parts does not constitute patentable invention, *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961). Further, adjustability, where needed, is not a patentable advance, *In re Stevens*, 212 F.2d 197, 101 USPQ 284 (CCPA 1954). With such a modification, Dial, Jr. would allow for removal, (thus interior access), of any of the four form panels.

Claims 15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carvel '504 in view of Sugiyama '572.

Carvel '504 discloses, Figs. 26-33, a first surface, (surface of a side panel), formed by an interior surface of a first wall panel, (the first side panel), a second surface, (surface of an opposite side), operatively attached to said first surface, said second surface formed by an interior surface of a second wall panel, (an opposite side panel), end surfaces, (surfaces on the ends), operatively attached to said first and second surfaces thereby forming an upright form and opposing sides, said end surfaces formed by interior surfaces of end wall panels, wherein at least one of said first, second and end surfaces horizontally supports a plurality of shaped discrete veneer

components, (as can be seen in Fig. 26), stacked vertically from the ground surface up, (page 1, lines 74-77 and page 3, lines 64-69), against at least one panel, wherein the wall is formed of a binding material, (page 3, line 71), to the wall unit form further wherein at least of one of said first, second and end panels is configured to be removably attached from one another, (col. 5, lines 22-25), (**claim 18**), to facilitate entry into a volume defined by the upright form, wherein said entry allows for placement of said plurality of irregularly-shaped discrete components, (**claim 15**). A volume is formed which can produce an "integral footing", (e.g., lower most part of the form), (**claim 19**). Pocket structures, or discrete components, 8 are operatively attached to surfaces, (**claim 20**). Carvel '504 does not appear to disclose use of "irregularly-shaped veneer components".

However, Sugiyama '572 teaches, as in Fig. 1, application and utilization of "irregularly-shaped" veneer components to form a wall structure. Therefore, to have provided the Carvel '504 assembly with "irregularly-shaped" veneer components, along with or in place of the Carvel '504 veneer components, thus providing a natural look to the wall surface, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Sugiyama '572. Carvel '504 discloses the capability of removing a panel which would allow access to the interior of the Carvel mold, col. 5, lines 22-25.

Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dial, Jr. '424 in view of Sugiyama '572 as applied to claims 15, 19, and 20 above, and further in view of Schultz '761.

As stated above Dial, Jr. discloses forming a volume that can produce an "integral footing". In any event, Schultz teaches, Figs. 2-5, forming a volume by providing extensions 9 on a mold to produce an "integral footing"; note that Schultz also teaches that the volume may have radiused corners as at 59 or 61. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the mold of Dial, Jr. to include extensions forming a volume, optionally including radiused corners, as taught by Schultz in order to provide integral forming of a footing. Note that this modification is consistent with the Dial, Jr. disclosure that architectural details may be built into the blocks (e.g. note block 93 in Fig. 14 and corresponding description in col. 7, lines 65-67).

Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carvel '504 in view of Sugiyama '572 as applied to claims 15 and 18-20 above, and further in view of Schultz '761.

As stated above Carvel discloses forming a volume that can produce an "integral footing". In any event, Schultz teaches, Figs. 2-5, forming a volume by providing extensions 9 on a mold to produce an "integral footing"; note that Schultz also teaches that the volume may have radiused corners as at 59 or 61. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made

to modify the mold of Carvel to include extensions forming a volume, optionally including radiused corners, as taught by Schultz in order to provide integral forming of a footing. Note that this modification is consistent with Carvel's disclosure that the method may be employed to form wall sections of any desired shape such as may be designed by an architect for any particular part of the building (note page 3, lines 77-87).

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dial, Jr. '424 in view of Sugiyama '572 as applied to claims 15, 19, and 20 above, and further in view of Torricelli '570.

Dial, Jr. only shows a rectangular wall unit and form. Blocks having non-rectangular shapes, however, are notoriously old and well known in the art of building construction and wall units, the blocks formed as appropriate for the desired application and varied in shape to provide adaptability for constructions therewith. As merely an example, Torricelli teaches both a rectangular block (Figs. 1-4) and teaches a curved block (Fig. 12) to be a modification thereof. Accordingly, it would have been obvious and well within the skill of one with ordinary skill in the art at the time the invention was made to modify the wall unit form of Dial, Jr. to include a non-rectangular aspect or curved wall panel design(s) in order to enable creation of correspondingly shaped non-rectangular construction units since non-rectangular construction units were notoriously old and well known in the art, as exemplified by Torricelli.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carvel '504 in view of Sugiyama '572 as applied to claims 15 and 18-20 above, and further in view of Torricelli '570.

Carvel teaches a wall unit form based on rectangular aspects. Blocks having non-rectangular shapes, however, are notoriously old and well known in the art of building construction and wall units, the blocks formed as appropriate for the desired application and varied in shape to provide adaptability for constructions therewith. As merely an example, Torricelli teaches both a rectangular block (Figs. 1-4) and teaches a curved block (Fig. 12) to be a modification thereof. Accordingly, it would have been obvious and well within the skill of one with ordinary skill in the art at the time the invention was made to modify the wall unit form of Carvel to include a non-rectangular aspect or curved wall panel design(s) in order to enable creation of correspondingly shaped non-rectangular construction units since non-rectangular construction units were notoriously old and well known in the art, as exemplified by Torricelli.

(10) Response to Argument

Initially, Appellant argues the proper standard of obviousness while referencing *KSR International Co. v. Teleflex Inc.* as being whether the teaching of the references would motivate one skilled in the art to produce the claimed invention, not whether they were notoriously well known in the art. However, the standards for obviousness set forth by *KSR International Co. v. Teleflex Inc.* include combining prior art elements according to known methods to yield predictable results, or providing for simple substitution of one

known element for another to obtain predictable results, or use of known technique to improve similar devices in the same way, or applying a known technique to a known device ready for improvement to yield predictable results. As such, the rejections of appealed claims 15-21 apply appropriate standards for obviousness including a showing of a teaching, suggestion, or motivation in the prior art, or in the knowledge generally available to one of ordinary skill in the art.

With regard to issues 1 and 2:

Appellant's own summary of the invention references veneer components 26 as the "irregularly-shaped discrete components". However, components 26 appear as rectangular modules. As such, the specification and drawings do not appear to provide support for "irregularly-shaped discrete components".

With respect to "horizontally supports", the claim language calls for at least one of the first, second and end surfaces to horizontally support the plurality of veneer components. However, it is not seen where any of the surfaces of the claimed form horizontally support the veneer components. The surfaces of the form are apparently placed in a vertical orientation with the veneer components stacked adjacent thereto. The specification does present the veneer components as stacked one upon the other. But, the specification does not state that the form wall supports the veneer components and the disclosure does not state or show the form walls supporting a horizontal part of the veneer components.

With respect to “from the ground up”, recitation of “individual stones are placed along the bottom of at least one side panel” does not stipulate placing a layer upon the ground surface. The instant specification’s recitation of “along the bottom of at least one side panel” would serve to read upon a layer or course of modules along a lower or bottom section of a form panel but, not necessarily define a layer of components as resting upon the ground surface.

And, Fig. 9 does not appear to show “curvilinear edges”. Fig. 9 appears to show straight edges connected to form a more or less trapezoidal shape.

With regard to issues 3 through 10:

Carvel ‘504 shows “components stacked vertically from the ground surface up” as can be seen in Figs. 31 and 33, for example. And, Dial, Jr. ‘424 shows, as in Fig. 16 or 19, modules being placed at a lowest level along or within block openings 62, (thus horizontally supporting a plurality of components). The instant specification fails to set forth any definition of “from the ground surface up”. In fact the specification as originally filed had not presented “stacked vertically from the ground surface up”. What is shown by either of Carvel ‘504 and Dial, Jr. ‘424 serves to read upon “components stacked vertically from the ground surface up”. Fig. 31 of Carvel shows a lowest most module along the bottom surface serving to read upon “from the ground surface up” while Dial, Jr. shows same in Fig. 19 and Fig. 16 of Dial, Jr. shows a lowest most module along the bottom of the panels. The specification presents the panels of the form as mounted upon “the ground” while further expressing that the “individual stones are placed along

the bottom of at least one side panel". Such does not explicitly define the modules as necessarily touching the earth. Clearly, Carvel and Dial, Jr. each disclose their modules as "placed along the bottom of at least one side panel".

Further, each of Dial, Jr. and Carvel show wall forms that "horizontally supports a plurality of...veneer components" particularly, with the instant specification failing to present a description of "horizontally supports a plurality of...veneer components" differing from that shown by either of Dial, Jr. or Carvel.

And, each of Dial, Jr. and Carvel disclose a "plurality of irregularly-shaped discrete components" particularly with the instant specification failing to present a description of "irregularly-shaped discrete components" differing from that shown by either of Dial, Jr. or Carvel. In any event, each of Dial, Jr. and Carvel as modified by either of Torricelli or Sugiyama possess "a plurality of irregularly-shaped discrete components" as is recited in the appealed claims.

As for "curvilinear edges" as found in appealed claim 17, each of Dial, Jr. and Carvel disclose "curvilinear edges" particularly with the instant specification failing to present a description of "curvilinear edges" differing from that shown by either of Dial, Jr. or Carvel. In any event, each of Dial, Jr. and Carvel as modified by Torricelli possess "curvilinear edges" as is recited in appealed claim 17.

As for "radiused corners" as found in appealed claim 21, each of Dial, Jr. and Carvel as modified by Schultz possesses "an integral-footing-producing volume having radiused corners" as is recited in appealed claim 21.

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As for "configured to be removably attached from one another to facilitate entry into a volume defined by the upright form", Appellant appears to be arguing method when the claims on appeal are directed to an apparatus for forming a wall. Each of Dial, Jr. and Carvel disclose panels that are removably attached to another panel to allow access within the respective form. In any event, Dial, Jr. as modified does provide for "at least of one of said first, second and end panels...configured to be removably attached from...another [panel] to facilitate entry into a volume defined by the upright form". And, Carvel does allow for access into a volume defined by the form as is expressed at lines 58-62 on page 3 of Carvel '504.


(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

M. Safavi


MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 3637

Conferees:

M. Petravick



L. Mai

